



Challenges and Reforms in the Implementation of Collateral Seizure on Land within Indonesia's Banking System: A Study of the Mortgage Law

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ABSTRACT

This study aims to analyze the challenges faced in the implementation of collateral seizure on land mortgages in Indonesia, particularly in the context of legal uncertainty and complicated execution procedures. Using a descriptive method and a juridical-normative approach, this study finds that the main issue in the execution of land collateral is the uncertainty regarding the ownership status of the land, often caused by unresolved land disputes or unregistered ownership. Additionally, the land execution process, which involves lengthy court procedures and the existence of land mafia, further worsens the efficiency of execution. Based on these findings, the study suggests several reforms, including improvements to the land registration system, more efficient judicial procedures, and enhanced legal protection for all parties involved. These reforms are expected to accelerate and simplify the process of executing land collateral as a legitimate and accountable form of credit guarantee.

A. INTRODUCTION

In Indonesia, land plays a crucial role in securing loans, particularly within the banking sector. The legal framework governing land as collateral is based on various regulations designed to provide legal certainty and protect land ownership rights. One key initiative in this regard is the Complete Systematic Land Registration Program (PTSL), which aims to ensure legal certainty for landowners and optimize the management of land assets by the government (Kartiwi & Hasyim, 2019; Darmotannyono et al., 2023; Syahdan et al., 2020). However, the implementation of the PTSL program is often hindered by factors such as high costs, complex administrative procedures, and a lack of public awareness regarding the importance of land certification (Suryanto, 2024; Haikal et al., 2023; Muhammad et al., 2022). With an integrated approach to PTSL, land regulation and management in Indonesia can become more efficient and equitable, supporting the government's responsibility in ensuring the well-being of its citizens (Kartiwi & Hasyim, 2019; Darmotannyono et al., 2023; Haikal et al., 2023; Suherman & Imran, 2020).

Indonesia's economic growth has a significant impact on credit growth. In general, stable economic growth drives an increase in credit demand, as businesses and individuals

seek new investment opportunities and expansion (Waisei, 2023). With economic growth, the demand for credit, particularly from the Micro, Small, and Medium Enterprises (MSMEs) sector, has risen, which in turn supports both local and national economic development (Sari & Fisabilillah, 2021). Conversely, effective credit growth can further accelerate economic expansion. Supportive monetary policies, such as low interest rates, play a crucial role in facilitating access to credit for entrepreneurs (Buhaerah, 2017; Firmansyah & Mu'ammal, 2023). Credit programs aimed at supporting infrastructure investment and productivity have contributed positively to regional economic growth in Indonesia (Rosita et al., 2020). In this context, maintaining inflation stability and optimizing financial management are essential for enhancing the effectiveness of credit allocation (Yusri et al., 2023).

Despite existing regulations focusing on providing legal assurance for land collateral, the efficient and effective implementation of this collateral system is still hindered by several practical challenges. Previous studies indicate that one of the main obstacles is the legal uncertainty regarding land ownership status, which often impedes the process of credit collateralization. Many landowners have yet to register their land officially, rendering the land collateral legally invalid (Muhammad et al., 2022). Furthermore, complex land ownership and land disputes present significant risks for financial institutions when executing collateral (Parmono et al., 2024).

Another challenge identified is the limited capacity for law enforcement at the local level. This is reflected in the lack of resources within the National Land Agency (BPN) to efficiently handle land registration and certification processes (Wardani, 2021), as well as the constraints associated with land acquisition procedures, which can prolong timelines and increase costs (Kusmalawati, 2024). This study focuses on the gaps in the legal implementation related to land collateral and execution procedures, which often hinder the success of financial institutions in asserting their rights over land used as collateral.

Previous studies have identified a gap in the enforcement of land collateral, particularly concerning the recognition and registration of land rights, which remains inadequately addressed. This study aims to bridge this gap by analyzing the mechanisms of executing collateral seizures on land mortgaged as security, as well as identifying factors that hinder the effective execution process. Additionally, the research will explore how legal uncertainties and complex administrative procedures can be improved to establish a more efficient and equitable system for land collateral enforcement in Indonesia.

B. METHOD

This study employs a descriptive method with a normative legal approach to depict and analyze the legal implementation of land collateral as credit security within the Indonesian banking system. The descriptive method is used to provide a clear and comprehensive understanding of the legal phenomena, relying on secondary data sources such as legislation, legal theories, and relevant documents (Amiruddin & Asikin, 2021). The aim of this method is to describe, interpret, and analyze the legal implementation

while providing a representative overview of the legal issues under investigation, specifically the execution of collateral seizures on land mortgages in Indonesia (Marzuki, 2017).

This research employs a normative legal approach, focusing on the analysis of applicable regulations, particularly Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. The study also utilizes relevant legal theories to examine how these regulations are applied in practice and to highlight potential conflicts or obstacles that arise in the process of executing collateral seizures on land. Secondary data for this research includes various relevant sources, such as: the Basic Agrarian Law No. 5 of 1960, Law No. 4 of 1996 on Mortgage Rights, and banking regulations governing credit secured by collateral. The study also incorporates legal literature, books, and journal articles that discuss legal theories related to credit guarantees and the execution of land collateral.

This study employs a descriptive analysis and secondary data to provide a comprehensive understanding of the legal enforcement related to land collateral, while identifying the challenges encountered in its implementation. It also highlights factors that hinder the execution of collateral seizures on land, such as legal uncertainties, land registration issues, and the complexities of land tenure practices (Nurhayati et al., 2021). By utilizing rich secondary data, the study will connect legal norms, legal theories, and field practices to identify existing issues in legal enforcement and propose solutions to optimize the land-based credit guarantee system in Indonesia

C. RESULTS AND DISCUSSION

Seizure of Collateral Rights on Land in Secured Transactions

According to Law No. 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, the mortgage provides priority to certain creditors to seize and sell mortgaged land through a public auction if the debtor fails to fulfill their obligations. This leads to an execution process that can be prioritized by the creditor holding the first mortgage right (Mertokusumo, 2012). For instance, a bank holding a mortgage on land can sell the property through an auction to settle unpaid debts owed by the debtor.

One key aspect discovered in this study is how land tenure status determines whether the land can be used as collateral. According to the Basic Agrarian Law (UUPA) No. 5 of 1960, only transferable and registered rights, such as Ownership Rights (*Hak Milik*), Business Rights (*Hak Guna Usaha*), and Building Rights (*Hak Guna Bangunan*), can be used as collateral (Kafrawi & Kafrawi, 2022). In contrast, the Right to Use (*Hak Pakai*) cannot serve as a subject of a mortgage unless it is duly registered in accordance with the provisions of the UUPA. This creates difficulties for debtors who wish to use the Right to Use over land as collateral, as this right cannot be transferred or used to secure loans unless it has been legally registered.

This study also highlights that the transfer of land rights to creditors holding a mortgage must adhere to the applicable legal procedures, and having clear land ownership status is a prerequisite for the enforcement of land collateral. However, issues arise when land rights are not officially registered in the land registration system or are involved in

land disputes, which leads to uncertainty regarding the legal status of the land. This results in obstacles to the execution of land collateral, as third parties claiming rights to the same land may file lawsuits or obstruct the enforcement process.

The execution process of land collateral, as stipulated in Article 6 of the Mortgage Law, states that if the debtor fails to fulfill their obligations, the creditor has the right to sell the mortgaged property through a public auction. However, the implementation of this execution is often hindered by legal disputes over land ownership that is not clearly registered. In some cases, the land involved in disputes, whether horizontal (between individuals) or vertical (between the public and the government), obstructs the execution process (Adnyani et al., 2020).

The execution procedure begins with the creditor's request for execution to the court. Subsequently, the court will assess the validity of the ownership documents and verify whether the legal procedures have been fulfilled. If all administrative requirements are met, the court will grant permission for the auction to proceed. However, in practice, legal uncertainties regarding the land status have led to significant delays in the auction process.

The use of land auctions as a debt recovery method is regulated under Law No. 4 of 1996 on Mortgage Rights. However, in practice, this process often encounters obstacles, particularly related to third-party claims on the same land, whether from the debtor or other parties asserting ownership rights over the land. Disputes regarding the status of land rights, including both administrative issues and those involving customary law, can delay or even hinder the auction process (Ghani & Tanawijaya, 2024).

The land auction process, as a means of debt execution, involves several key stages: notifying the debtor of the creditor's intention to enforce the collateral, applying to the court for execution authorization, and conducting the auction itself. While this procedure is clearly regulated by law, challenges often arise, particularly concerning the recognition of rights to land that is inadequately registered or unresolved ownership disputes. These issues contribute to a lack of confidence in the auction mechanism as an effective means of debt recovery (Iristian, 2024; Erwandi et al., 2023).

The main issue faced in the execution and auctioning of land collateral is the legal uncertainty surrounding land ownership status. Many parcels of land are not systematically registered, which hampers the execution process. In addition, land disputes, both horizontal and vertical, often complicate the execution of land collateral (Apriyanto & Ufran, 2023). Therefore, reforms in the land registration system and increased public awareness regarding the importance of land certification are urgently needed to establish better legal certainty for collateral holders and facilitate the execution process (Mujiburohman, 2018).

Overall, the findings of this study indicate that although Indonesian law provides a clear mechanism for the execution of land collateral, significant challenges remain concerning land legal certainty and the implementation of the land registration system, which is not yet fully equitable. Therefore, strategic measures are needed to improve the land registration system and strengthen legal certainty regarding land rights status, ensuring the effectiveness of collateral seizure and auction as methods for debt recovery.

Discussion

The implementation of collateral foreclosure on mortgage rights over land within the Indonesian legal system presents complex challenges, both from a legal and procedural standpoint. Law No. 4 of 1996 on Mortgage Rights provides a clear legal framework regarding the granting of land collateral; however, its implementation faces significant obstacles. The primary issues identified in this study include legal uncertainty regarding land ownership status, prolonged execution procedures, and the potential for disputes involving third parties claiming rights to the same land.

One of the main challenges that often hinders the execution process is the uncertainty surrounding the legal status of land used as collateral. For land to be eligible as collateral, it must have a valid and registered certificate. However, in practice, many parcels of land face legal issues. Numerous properties either lack a valid certificate or are involved in unresolved disputes. This uncertainty creates significant difficulties for banks or creditors in executing the collateral, as the land's legal status remains unclear. This lack of clarity also affects the confidence of financial institutions in the land collateral system as a means of securing loans. In this context, the importance of strong evidence during the foreclosure process is highlighted, particularly in ensuring that the confiscated property is both existent and legally valid.

Secondly, the judicial process for the execution of land collateral in Indonesia is often time-consuming and inefficient. As observed in this study, many legal disputes involving land are hindered by lengthy and complicated court procedures. This indicates that the execution process for land collateral tends to be slower compared to other types of collateral, such as movable property (Subekti, 2014). Disputes concerning the status of unregistered land or those involving third-party claims further complicate the situation and prolong the resolution time. Therefore, judicial system reforms are necessary to expedite the execution process, minimize unnecessary delays, and leverage information technology to improve transparency and efficiency (Anggraeni & Marwanto, 2020).

The resolution of land disputes involving third parties who claim rights over the same land is a significant obstacle in the execution of collateral seizure. In some cases, third parties perceive that their rights over the land are at risk, and the dispute resolution process often hinders the execution. Therefore, the role of mediators or dispute resolution institutions is crucial in ensuring that the execution process proceeds smoothly and fairly. Both the government and financial institutions must collaborate to provide effective channels for dispute resolution that can accelerate the execution process without infringing upon the rights of the parties involved.

The presence of land mafia and corruption practices also significantly impacts the effectiveness of the collateral rights system and the execution of collateral seizures in Indonesia. Land mafia practices, which involve document forgery and fraud in land transactions, can undermine the agrarian system and exacerbate the existing legal uncertainty (Situmorang & Triadi, 2024). Addressing these issues requires stricter oversight of land transactions and enhanced regulations to prevent fraud and manipulation in the transfer of land rights.

Lastly, there is a need for reform in land registration policies to address the challenges

arising from the lack of clear and legitimate land certification. The Complete Systematic Land Registration Program (PTSL) should be expanded and expedited to ensure that all land used as collateral has clear legal status and can be legally executed. Furthermore, broader public outreach on the importance of land registration is essential to increase participation and public awareness regarding the significance of possessing legitimate land certificates (Mujiburohman, 2018; Lauren, 2023).

The application of collateral rights within the context of Indonesian law presents significant challenges, particularly concerning legal certainty regarding land status, the presence of disputes, and the complexities of enforcement procedures. However, by implementing reforms in the land registration system, expediting judicial processes, and decisively addressing land mafia issues, it is expected that the execution of land collateral can be carried out more efficiently and fairly. Additionally, strengthening legal protection for all parties involved in land collateral transactions is crucial to fostering greater trust in Indonesia's legal system.

D. CONCLUSION

This study reveals the key challenges in the implementation of foreclosure on land collateral in Indonesia, which involve issues of legal uncertainty related to land ownership, the complexity of the execution procedure, and the potential for legal conflicts that delay the process. The primary issue identified is the uncertainty surrounding the status of land, arising from unclear ownership history and unresolved land disputes, which hinder the credibility and effectiveness of the land collateral system. The slow execution process, often impeded by these legal issues, affects the efficiency of banks in recovering debts through the auction of collateral.

Moreover, the prevalence of disputes involving third parties claiming rights to the same land exacerbates the execution process. The ongoing practice of land mafia further undermines legal certainty and diminishes public trust in the agrarian legal system. To address these issues, the research suggests the need for a reform of land registration policies, enhancement of more efficient judicial procedures, and strengthening legal protection for all parties involved in land collateral transactions. Therefore, it is crucial to improve the existing legal mechanisms and procedures to ensure that land collateral enforcement can be more efficient and just.

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